

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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THOMAS A CENSKE,

Plaintiff,

v.

CLINTON COUNTY SHERIFF  
DEP'T and UNKNOWN OFFICERS  
ASSISTING AT THE CLINTON  
COUNTY JAIL,

Defendants.

Case No. 5:04-CV-107

Hon. Richard Alan Enslen

**ORDER**

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This matter is before the Court on Plaintiff Thomas A. Censke's Motion to Continue Discovery pursuant to Federal Rule of Civil Procedure 56(f) relevant to Defendants' Motion for Summary Judgment. "[S]ummary judgment is improper if the non-movant is not afforded a sufficient opportunity for discovery." *Abercrombie & Fitch Stores Inc. v. American Eagle Outfitters Inc.*, 280 F.3d 619, 627 (6th Cir. 2002) (other citations omitted).

In this case, however, Plaintiff has already responded to Defendants' summary judgment motion and now subsequently asks to continue discovery to gather further evidence. Acknowledging the procedural irregularity of such a request,<sup>1</sup> the Court is loathe to decide a motion for summary judgment in the absence of a complete evidentiary record. Plaintiff contends that he has made document requests under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, to certain

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<sup>1</sup> That is, because Plaintiff has already responded to Defendants' Motion for Summary Judgment he will need leave from the Court to file any further pleadings concerning Defendants' Motion.

governmental agencies and is patiently awaiting their reply. The Court finds that Plaintiff has made a proper showing of the need for further discovery under Rule 56(f).

**THEREFORE, IT IS HEREBY ORDERED** that Plaintiff Thomas A. Censke's Motion to Continue Discovery (Dkt. No. 120) is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff is granted leave to file a sur-reply brief, which shall include the evidentiary materials he is waiting to receive. Plaintiff's sur-reply brief **SHALL** be filed **NOT LATER THAN JUNE 29, 2006**.

**IT IS FURTHER ORDERED** that Defendants, should they choose to do so, may file a sur-reply brief **WITHIN 14 DAYS** upon receipt of Plaintiff's sur-reply brief.

DATED in Kalamazoo, MI:  
May 19, 2006

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
SENIOR UNITED STATES DISTRICT JUDGE